

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS

3 EASTERN DIVISION

OCT - 0 1980

SECRETED

OCT 10 1980 M. Stuart Cunningham, Clerk
United States District Court

5 BALLY MANUFACTURING CORPORATION,

6 Plaintiff,

7 -vs-

Case No. 78-C-2246

8 D. GOTTLIEB & CO., WILLIAMS
9 ELECTRONICS, INC., and ROCKWELL
INTERNATIONAL,

10 Defendants.

12 CONTINUED DEPOSITION of DANIEL N. WINTER,

13 a witness in the above-entitled action, taken at the instance
14 of the Defendants, under the provisions of the Federal Rules
15 of Civil Procedure, pursuant to Notice and Agreement, before
16 KATHLEEN M. HACKBARTH, a Notary Public in and for the State
17 of Wisconsin, at 825 North Jefferson Street, in the City and
18 County of Milwaukee, State of Wisconsin, on the 14th day of
19 July, 1980, commencing at 10 o'clock in the forenoon.

20 APPEARANCES

21 FITCH, EVEN & TABIN, by DONALD L. WELSCH, Esq.,
22 A. SIDNEY KATZ, Esq., and JEROLD B. SCHNAYER, Esq., 135 South
23 LaSalle Street, Chicago, Illinois 60603, appeared on behalf
24 of the Plaintiff, Bally Manufacturing Corporation, and the
25 witness, Daniel N. Winter.

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ARNOLD, WHITE & DURKEE, by WAYNE M. HARDING,
Esq., 2100 Transco Tower, Houston, Texas 77056, appeared
on behalf of the Defendants, D. Gottlieb & Co. and Rockwell
International.

MC DOUGALL, HERSH & SCOTT, by MELVIN M.
GOLDENBERG, Esq., 135 South LaSalle Street, Chicago, Illinois
60603, appeared on behalf of the Defendant, Williams Electronics,
Inc.

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EXAMINATION BY:

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3	Mr. Harding	71
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EXHIBITS:

Marked Identified

10		55
11	No. GD325 - Resume of Daniel N. Winter	
12	Defendant Williams Winter's Depsotion	
13	No. 1 - Drawing made by Daniel N.	
14	Winter	88 86
15		

Objection of Mr. Welsh noted pursuant to request of
 Mr. Harding: Page 141, Lines 18 through 20.

1 A None.

2 Q How long have you been employed by Kurz & Root?

3 A Since November of last year.

4 Q November, 1979?

5 A Right.

6 Q And prior to November, 1979, where were you employed
7 immediately prior, if you were?

8 A I was president of a company called Red Baron Amusement, Inc.

9 MR. WELSH: Mr. Harding, at the earlier
10 session of the deposition of Mr. Winter taken on behalf
11 of Rockwell and Gottlieb by Mr. Lynch, Mr. Winter's prior
12 employment was inquired into. I'm going to object to
13 covering areas that were covered before by Mr. Lynch.

14 MR. HARDING:

15 Q And when did you initially become employed by Red Baron
16 Amusement, Inc.?

17 A I believe it was in February of 1964.

18 Q 1974?

19 A '74.

20 Q And were you employed by Red Baron from February of '74
21 until October of '79?

22 A Approximately, correct.

23 Q Did you hold any other employments between February of
24 1974 and prior to November of '79 other than Red Baron
25 Amusements?

1 Q After you graduated from college?

2 A Yes.

3 Q Immediately after you graduated from college?

4 A Within about nine or ten months.

5 Q Were you commissioned into the Army upon graduation?

6 A Yes, I was.

7 Q As a second lieutenant?

8 A Yes, I was.

9 Q Do you recall when you made first lieutenant?

10 A No, I do not.

11 Q Within a short time of making the commission of second
12 lieutenant?

13 A It was rather quickly, yes.

14 Q Now, you indicated you graduated from Colorado in 1959.

15 When did you apply for admission to Colorado?

16 A I believe it was in 1954.

17 Q And was that right out of high school?

18 A Within about eight months.

19 MR. WELSH: Mr. Harding, this area was covered
20 very thoroughly by Mr. Lynch.

21 MR. HARDING: Sir, I will challenge you to
22 show me where Mr. Lynch asked when he went into college.

23 MR. WELSH: The problem is the same that we've
24 run into before where you have switched counsel and you
25 have covered the same area that has been covered before

1 by Mr. Lynch. Whether there is a specific question that
2 he did not ask that you're now asking I don't think is
3 critical to the fact that you're covering the same ground
4 and this is a third-party witness.

5 MR. HARDING: I think the reason for this,
6 Mr. Welsh, will become apparent if you will bear with me.

7 MR. WELSH: We've agreed that you could take
8 over for Mr. Lynch because he stated he had a family
9 problem, but that was not agreed to with the expectation
10 that we would be starting all over again and covering the
11 same ground.

12 MR. HARDING: We only have a few more minutes
13 to go of this.

14 Q When you graduated from the University of Colorado, did
15 you graduate only with the mechanical engineering degree?

16 A No, I also had a degree in geography. My degree from the
17 University of Colorado was in geography.

18 Q In 1959?

19 A Correct.

20 Q Is that a major and minor situation or can you explain,
21 was it a major BS ME --

22 A No, the major was geography. I believe my minor was
23 anthropology.

24 Q So you had two programs going concurrently, the engineering
25 program and the geography program?

1 A No, I also went to school in Norway, to the University
2 of Trondheim Folke Høi Schøle. This is in the country of
3 Norway, where I studied engineering, and this was in --
4 I forget my exact year tht I spent a year over there,
5 but that year was in Norway at their technical college,
6 or they call it a high school and that was in engineering.
7 Q But your degree is not from the school in Norway, your
8 mechanical engineering degree?
9 A That's correct.
10 Q Instead, it was -- it was a BS ME from the University of
11 Colorado in 1959?
12 A It was a BS in geography and anthropology major -- minor,
13 excuse me.
14 Q So you don't have a BS ME degree?
15 A Not from the University of Colorado.
16 Q Where is your BS ME degree --
17 A I studied that in Norway at the Sund Region of Norway in
18 Trondheim.
19 Q Because of the one year study, you were awarded a bachelor's
20 degree in mechanical engineering?
21 A It wasn't a full degree. It was assoc-- our equivalent
22 would be associate type degree.
23 Q You don't have a bachelor degree in mechanical engineering
24 then?
25 A That's true.

1 Q Now, I'm trying to -- because of the error in dates at
2 the last deposition when you said you graduated in '59
3 and then '69, two years Martin-Marietta in Denver, two
4 years Martin-Marietta in Tucson, and than, as I recall,
5 three years for Cutler-Hammer, that does not account for
6 the ten-year period from '59 to when you joined Nutting
7 Industries. I'd like to -- to resolve that inconsistency
8 if we can.

9 A I could give you a copy of a resume if you like.

10 Q Could you do that please?

11 A If you want it, I have it in the car, and I could give
12 that to you today.

13 Q That perhaps would expedite it. Maybe we can do that at
14 the break. I'll go ahead. I'm not going --

15 A I don't remember the exact dates. What I said in the
16 deposition last time, two years here, one year there,
17 they were just general in nature. They could have been
18 eighteen months or two and a half years or three and a
19 half years. They were not exact dates. I didn't even
20 try to really remember exact dates with reference to that
21 period.

22 Q Now, Mr. Winter, as a result of the first session of the
23 deposition, a transcript was typed up showing the questions
24 and responses to that session. Did you review a transcript
25 of the last deposition session?

1 A I have not seen it.

2 Q Have you since the last deposition session reflected on
3 the answers that you gave at that session and made a
4 determination that some of the answers that you gave there
5 may have been imprecise or not true?

6 A I did reflect on the total subject matter, but I don't
7 recall as I'm sitting here now precisely what I thought
8 was in error or where something wasn't exactly precise.

9 Q So you don't recall anything right now that was wrong
10 other than you do not have a BS ME degree?

11 A Not from the University of Colorado.

12 Q You don't have a BS ME from anywhere.

13 A I considered it an associate type degree from the University
14 in Norway where I spent the year studying engineering
15 products courses.

16 Q But the fact is you don't have a BS ME degree.

17 A That's true.

18 Q Now, were you advised that the one issue that arose at
19 the last deposition session was taken up before the United
20 States Federal Judge on the issue of whether we have the
21 right to inquire of the questions and communications be-
22 tween Bally's attorneys and you, prior to the deposition
23 session?

24 A (No oral answer given.)

25 Q Were you advised of --

1 A Yes, I was advised.

2 Q And were you advised of what the -- what the Court had
3 to say in response to that issue, and I'm quoting from
4 the transcript now.

5 A I have not been advised of the details, no.

6 Q In response to a statement from Bally's attorneys, the
7 Court said, Well, I'm inclined to think that any questions
8 about any conversations with you concerning the subject
9 matter relative to this case is proper inquiry. I realize
10 you have a lawyer-client privilege point that you are
11 raising. I think the circumstances under which it is
12 being raised are not altogether unaromatic. I just don't
13 like the smell of this.

14 Now, I want to go into the area, with that in
15 mind, of all events leading up to the last deposition
16 session and the present deposition session. You had
17 indicated that you had an approximately two hour telephone
18 conversation with Bally's attorneys in preparation for the
19 first session; is that correct?

20 A That's an error.

21 Q All right. First, will you tell me the total number of
22 communications, whether it be over the telephone, or
23 personal, that you had with Bally's attorneys?

24 A I do not recall the number. But in each case -- it was
25 several -- they were short phone calls, probably five

1 minutes duration.

2 Q So you did not have a lengthy hour or two hour conversa-
3 tion?

4 A That is correct.

5 Q Did you have any personal meetings with any of Bally's
6 attorneys prior to the morning of the last deposition?

7 A Yes, I did.

8 Q Okay. And do you recall approximately how long in advance
9 of that deposition session this personal meeting took
10 place?

11 A Several weeks.

12 Q And was that personal meeting after several phone call
13 communications?

14 A Yes, it was.

15 Q Now, how many personal meetings did you have prior to the
16 deposition day?

17 A Two.

18 Q All right. Now, the first telephone communication that
19 you had with Bally's attorneys to your recollection was
20 with whom?

21 A I believe it was Mr. Jerold Schnayer.

22 Q Anybody else at that time?

23 A No. No one else at that time.

24 Q Now, what to your recollection transpired between you and
25 Mr. Schnayer in that telephone conversation?

1 A I don't recall.

2 Q Did he identify that he was a Bally lawyer?

3 A Yes, he did.

4 Q Did he identify Mr. Welsh and Mr. Katz as Bally lawyers?

5 A I don't believe their name was brought up in the first
6 conversation.

7 Q Did he offer to represent you at that point?

8 A No, he did not.

9 Q Did he discuss the pending litigation between Bally and
10 either Gottlieb or Williams?

11 A Just in a very brief way. I think he indicated that there
12 was a pending litigation between companies you just
13 mentioned, and that some time in the future they might
14 want to talk to me.

15 Q Did at that time you relate any of your factual recollec-
16 tions concerning events at MCI?

17 A Not that I recall.

18 Q What was the next communication that you recall that you
19 had with Bally's attorneys?

20 A I don't remember exact dates. I believe it was some time
21 after the attorney had called me that was representing
22 Williams.

23 Q That was Mr. Rifkin who called?

24 A Yes, that was Mr. Rifkin.

25 Q And was -- was that a phone call from Mr. Rifkin where you

1 agreed to meet with him or some other Williams attorney
2 to discuss your factual recollections?

3 A He asked if I would meet with him that day when he called,
4 and I said, no, I couldn't do it, it just didn't meet
5 my schedule. I indicated to him on the phone I would
6 be willing to meet with him at a later date.

7 Q And after that phone call then you had another telephone
8 conference with Bally's attorneys?

9 A Yes, I did.

10 Q And who was that conference with?

11 A I believe that was also with Jerold.

12 Q At that point did Mr. Schnayer offer to represent you
13 at the deposition?

14 A Yes, he did.

15 Q And did he advise you to not communicate any longer with
16 any representative of Gottlieb or Williams?

17 A Not in that particular phone call.

18 Q Okay. To your recollection what happened in that phone
19 call?

20 A I had indicated in that phone call that I had been called
21 by the lawyer representing Williams, and that I was plan-
22 ning on meeting with him. I believe I was counselled
23 the Bally lawyers would represent me if I so -- was so
24 inclined.

25 Q Did you discuss any of the facts concerning the litigation

1 MR. GOLDENBERG: We have the document, sir.

2 Let's go on.

3 (The last question and answer were read as

4 follows:

5 "Q Did you discuss with Mr. Schnayer during
6 this telephone call any of the facts to
7 your recollection of what happened at
8 MCI?

9 A I don't believe anything of substance or
10 facts was discussed on the phone calls,
11 other than a tentative agreement to get
12 together in the future and perhaps talk.")

13 MR. HARDING:

14 Q Now, Mr. Winter, when was the first time that you actually
15 produced to Bally any documents and discussed sensitivity
16 of documents?

17 MR. WELSH: May I have the question?

18 (The question as set out on lines 11 through
19 13 above was read by the court reporter.)

20 MR. HARDING: When; I'm trying to establish
21 the guidelines so there will be no question.

22 MR. WELSH: I think the question is a compound
23 question, I believe.

24 THE WITNESS: That sounded compound to me, also.

25 MR. HARDING:

Q When did you first produce documents to Bally's lawyers?

A I think approximately three to four weeks prior to the
dep -- first deposition.

1 Ernst Cafe.

2 Q And you had no documents at that time?

3 A Yes, I did have documents. At the personal meeting I
4 had --

5 Q All right. So you had a third telephone conference with
6 Mr. Schnayer, and then you had the personal meeting?

7 A That is correct.

8 Q Did anybody accompany Mr. Schnayer to the meeting?

9 A Yes, Mr. Donald Welsh.

10 Q Anybody else?

11 A No one else.

12 Q Did you bring all of the documents to that meeting which
13 have been produced at the deposition session last time and
14 this time?

15 A I don't believe so.

16 Q Did you produce more or less at that time?

17 A Far less.

18 Q Are all the documents that you produced at that session,
19 have they been produced in the deposition?

20 A I would have no way of knowing.

21 Q Well, at this time I'd like you to review the documents
22 which have been produced to see if any come to mind that
23 you gave to them that have not been produced today.

24 MR. HARDING: And, Mr. Schnayer, I'd like him
25 to have the originals because that's what he purportedly

1 produced to you at that time.

2 Q While Mr. Schnayer is retriving those documents, we'll
3 ask a couple more questions.

4 MR. WELSH: I'd rather you waited until he --

5 MR. HARDING: All right. If that's your
6 pleasure, Mr. Welsh.

7 THE WITNESS:

8 A You want me to look for what now?

9 MR. HARDING:

10 Q I would like you to review the stack of documents which have
11 now been placed before you to see if you recall whether
12 you produced to Mr. Schnayer and Mr. Welsh at this first
13 personal meeting any documents other than the ones in that
14 stack.

15 A One document seems to be missing.

16 Q What is that document?

17 A It's a speed letter I wrote to Marv Thompson dated some
18 time in the latter part of January of '74.

19 MR. SCHNAYER: I believe one of the top letters
20 should -- If you give me the documents I can probably
21 pull it for you.

22 MR. HARDING:

23 Q To your recollection did you produce any document --

24 A This is the document I was looking for.

25 Q All right.

1 MR. WELSH: The record should show it's
2 document number X115.

3 MR. GOLDENBERG: May I ask a question of counsel
4 for plaintiff? Have you produced to the defendants every
5 document supplied to you by Mr. Winter?

6 MR. WELSH: I don't believe we have to answer
7 that, counsel.

8 MR. GOLDENBERG: I think you do. Is your
9 position firm on that, Mr. Welsh?

10 MR. WELSH: Yes. I think there are procedures
11 for you to follow.

12 MR. GOLDENBERG: I'm following that procedure.
13 You can consider this a Rule 12D conference. Have you
14 produced every document supplied to you by Mr. Winter?
15 Do I have your response, sir?

16 (There was an off-the-record discussion between
17 Mr. Welsh and Mr. Katz.)

18 MR. WELSH: It's not appropriate to have a
19 Rule 12D conference during a deposition.

20 MR. GOLDENBERG: All right. We'll consider
21 that I believe it to be appropriate. It's the most
22 expeditious way to handle it. I will pursue our remedies
23 in the matter; that's all.

24 MR. HARDING:

25 Q Mr. Winter, do you recall producing to Bally's attorneys

1 any document showing a microprocessor?

2 MR. WELSH: Object to the question as indefinite.

3 What do you mean by showing?

4 THE WITNESS:

5 A Did I show a -- documents? Not that I recall.

6 MR. HARDING:

7 Q By showing I mean that would refer to the use of an -- a
8 microprocessor.

9 MR. WELSH: That's referring to the use and not
10 to a microprocessor itself, is that --

11 MR. HARDING: The use of a microprocessor. You
12 have to have a microprocessor before you can use it, Mr.
13 Welsh.

14 THE WITNESS:

15 A Did I show a document --

16 MR. HARDING:

17 Q Yes.

18 A -- that indicated a microprocessor?

19 Q No, a document that showed or referred to the use of a
20 microprocessor.

21 MR. WELSH: That's a different question, counsel.

22 MR. HARDING: I'll ask that question then.

23 MR. WELSH: It's also stating --

24 THE WITNESS:

25 A I believe I had a document that showed the cost of a

1 microprocessing unit.

MR. HARDING:

2 Q As far as the application of a microprocessing unit,
3 did you show any documents --

4 A No, I did not.

5 Q Now, how long did this meeting take place?

6 A Approximately two hours.

7 Q And at that time did you review all of the documents that
8 you produced to Bally's attorneys with them?

9 A Would you restate that?

10 (The pending question as set out on lines 7
11 and 8 above was read by the court reporter.)

12 THE WITNESS:

13 A I related to the documents which I had with me at that time.

14 MR. HARDING:

15 Q Related, related what?

16 A I guess I have to ask the question again, the previous
17 question.

18 Q All right. I'll restate it. Did you review the documents
19 you produced with Bally's attorneys at this first meeting?

20 A I talked about the documents which I produced at the first
21 meeting with the lawyers, yes.

22 Q And did you discuss your recollection of events at MCI at
23 this first meeting?

24 A Yes, I did.

25 Q And did you relate those MCI events with the documents

1 patent, U.S. 4,093,232, and tell me after reviewing it
2 whether you've ever seen that patent or any portion thereof
3 before.

4 A I've never seen this document before or any portion of it
5 before.

6 Q Have you ever seen any drawing which you would consider to
7 be similar to any drawings of the patent?

8 MR. WELSH: I object to that question as
9 lacking -- as calling for his opinion and calling for him
10 to make a judgment by comparison with the drawings here.
11 It calls for interpretation of the patent. He says he's
12 not familiar with it. It calls for his lay opinion today,
13 and I -- I think it's an improper question.

14 MR. HARDING: Are you instructing him not to
15 answer then, to give his lay opinion?

16 MR. WELSH: I'm object to the question as call-
17 ing for his opinion and he has not been established as
18 an expert or as having formed any opinion such as that
19 which you're attempting to elicit.

20 MR. HARDING: I'm entitled to have lay opinions,
21 Mr. Welsh, and we talked about a certain schematic of
22 Mr. Frederiksen's. I want to know whether this witness
23 after reviewing any of these various documents or various
24 drawings in that patent document --

25 MR. WELSH: I object to the question as calling

1 for him to study a document and give an opinion with
2 respect to it when he has testified that he has never seen
3 the document before.

4 MR. GOLDENBERG: The question is, if I under-
5 stand it, Mr. Welsh, has he ever seen any drawings that
6 looked like it or similar --

7 MR. WELSH: That is calling for him to inter-
8 pret --

9 MR. GOLDENBERG: I think it's a perfectly
10 legitimate question. It calls upon his recollection.

11 MR. HARDING: As a lay witness.

12 MR. GOLDENBERG: If he's never seen anything
13 that looked like that before, he'll say no and that will
14 be the end of it.

15 MR. WELSH: He has stated that he recognized a
16 document that was furnished to him by counsel for Bally,
17 and you can ask him to identify that document, if you wish,
18 and make your own comparison with respect to what is shown
19 in that document and any portion of the 232 patent. But
20 it is improper for you to ask him to form an opinion by
21 examining a document that he has never seen before.

22 MR. HARDING: Now, Mr. Welsh, I think your
23 position is stated, and I also -- you want to either
24 instruct him to answer or not answer in light of the
25 Judge's ruling on questions put to this witness as to

1 relevancy, as to matters relevant to the lawsuit and this
2 patent certainly is relevant and he's recognized the
3 document, he's a lay witness, and we're entitled to
4 have --

5 MR. KATZ: He didn't recognize the document.

6 MR. WELSH: He didn't recognize the document.

7 MR. HARDING: The document you gave me.

8 MR. KATZ: You're pointing to the patent.

9 I don't know what kind of misleading tactics you're trying
10 to use, Mr. Harding. You're pointing to the patent and
11 saying he recognized the document.

12 MR. HARDING: You and I are going to get into
13 it again if you're telling me I'm using misleading tactics.

14 MR. KATZ: That's what it looked like to me.

15 MR. HARDING: I don't care --

16 MR. KATZ: You say this document and --

17 MR. HARDING: --about your judgment.

18 MR. GOLDENBERG: Let's have the witness answer
19 the question.

20 MR. WELSH: The Judge ruled with respect to
21 conversations that we as counsel for Bally had with Mr.
22 Winter. The Judge did not rule that Mr. Winter could
23 give an opinion about a document that he has never seen
24 before.

25 MR. GOLDENBERG: His opinion is not called for.

1 His recollection is what is called for, sir.

2 MR. HARDING: And we're entitled to the opinion
3 anyway from a lay witness.

4 MR. WELSH: He says he has never seen the
5 document before and --

6 MR. HARDING: Mr. Welsh --

7 MR. WELSH: -- I disagree with you that you're
8 entitled to his opinion as a lay witness with respect to
9 this document.

10 MR. HARDING: If you had any reason other than
11 representing Bally's interest, you would allow that question
12 to be answered. If you had --

13 MR. WELSH: It's an improper question.

14 MR. HARDING: It's not improper.

15 MR. WELSH: Improper procedure.

16 MR. HARDING: Would you please answer the
17 question, Mr. Winter, and you can reread the question to
18 refresh his recollection.

19 (The pending question was read as follows:

20 "Q Have you ever seen any drawing which you
21 would consider to be similar to any draw-
ings of the patent?")

22 MR. WELSH: I would like to ask a voir dire
23 question before the witness answers this question.

24 MR. HARDING: Surely.

25 MR. WELSH: Are you familiar with any drawing

1 in that patent prior to coming here today?

2 THE WITNESS: I have never seen any of those
3 drawings before.

4 MR. WELSH: Have you ever compared any of those
5 drawings with any other drawings?

6 THE WITNESS: I've never compared anything in
7 this patent with anything else.

8 MR. HARDING:

9 Q Subject to that voir dire and that background, now will
10 you answer the question?

11 A Yes, I will. The drawing on this page -- you can identify
12 it --

13 Q This is figure 5 he's referring to.

14 A --' looks similar to drawings that I've seen that both
15 Dave Nutting and Jeff Frederiksen had several years ago.

16 Q Now, Mr. Winter, have you ever seen a copy of the Nutting
17 transcript or any portion of the Nutting transcript?

18 A I have not.

19 Q Have you ever seen any copy or portion of the Frederiksen
20 transcript in the present litigation?

21 A I've not seen it to the point where I could read it. I
22 saw it only visually at a distance.

23 Q Have you seen any portion of the Duane Knutson transcript?

24 A I have not.

25 Q Now, has Bally's attorneys indicated to you any testimony

1 whatsoever given in the present litigation by Mr. Nutting?

2 MR. WELSH: Could I have the question, please?

3 (The pending question was read, as follows:

4 "Q Now, has Bally's attorneys indicated to you
5 any testimony whatsoever given in the present
6 litigation by Mr. Nutting?")

7 MR. WELSH: I object to the question as in-
8 definite as to what you mean by indicating testimony given
9 in this litigation.

10 THE WITNESS: I don't understand your question
11 either, sir.

12 MR. HARDING:

13 Q You don't understand what indicating testimony means?

14 A No, I don't.

15 Q Has Mr. -- Has any of Bally's attorneys ever summarized
16 testimony which Mr. Nutting has given in the present
17 litigation?

18 A No, they have not.

19 Q Have they ever given their opinion as to what Mr. Nutting
20 had to say in the present litigation as to any MCI
21 happenings in the 1973-74 time period?

22 MR. WELSH: I object to the question as to what
23 you mean by Mr. Nutting have to say in this litigation.
24 Do you mean during the deposition?

25 MR. HARDING: Yes.

THE WITNESS: Could you repeat the question?

(The pending question was read as follows:

"Q Have they ever given their opinion as to what Mr. Nutting had to say in the present litigation as to any MCI happenings in the 1973-74 time period?"

THE WITNESS:

A No, they have not.

MR. HARDING:

Q So you have no understanding of any testimony which Mr. Nutting has given to date in the present litigation; is that correct?

MR. WELSH: I object to that question as leading and mischaracterizing what this witness just testified to. You're -- you're completely turning around what he said in his answer to the previous question, and I object to the question as leading. This is a third-party witness that is not hostile.

MR. HARDING: I reject your position out of hand. He's your witness. You've established that in going in front of Judge Grady. I have a new question posed to the witness, and I would like the court reporter to read it back.

(The pending question as set out on lines 8 through 10 above was read by the court reporter.)

MR. WELSH: Same objection. He gave no testimony as to any understanding that he had about the

1 litigation. It was only a question as to whether Bally's
2 attorneys had given him any opinion.

3 MR. HARDING:

4 Q Please answer the question.

5 A Your question still further confuses me. I do not under-
6 stand the nature of your question.

7 Q You do not understand whether you have an understanding
8 of testimony that Mr. Nutting has given in the present
9 litigation?

10 A I only understand the position that Mr. Nutting has a
11 patent case or is part of a patent case between Bally and
12 Williams, and that they believe they have a patent.
13 Nothing more in detail.

14 Q Okay. Now, I want you to tell me any conversations or
15 communications between Bally's counsel, or Bally's employees,
16 and that includes Mr. Nutting himself, regarding any
17 testimony that Mr. Nutting has given in this present
18 litigation.

19 A I have not discussed this present litigation with David
20 Nutting at all.

21 Q I'm talking about Mr. Nutting's testimony in the present
22 litigation.

23 A I don't know what his testimony is.

24 Q You have no understanding of what his testimony has been?

25 A None other than the fact that there is a case which he is

1 because I didn't have money to get out of the parking lot.
2 Today, they also gave me \$10 to cover my parking and
3 lunch.

4 Q Is that all?

5 A That is all.

6 Q Does your employer know you're here today?

7 A Yes, he does.

8 Q Now, after the first personal meeting you had with Mr.
9 Welsh and Mr. Schnayer, what next happened in connection
10 with your testifying in the present litigation?

11 A I believe I had a call from Mr. Rifkin indicating that
12 they were going to ask me to testify as I'm doing today.
13 And after that phone call I called Mr. Jerry Schnayer and
14 told him about it, and he said, well, that he would of
15 course represent us -- represent me as we had agreed
16 earlier, period.

17 Q Were any of the -- Were any of your recollections discussed
18 with Mr. Schnayer as to MCI development activities during
19 that telephone conversation?

20 A Not that I recall.

21 Q After this telephone conference with Mr. Schnayer, what
22 was the next occurrence between you and Bally's attorneys?

23 A I believe I received the, ah, -- deposition was placed
24 formally on me, period.

25 Q Well, you testified as to two personal meetings, if you

1 MR. WELSH: That's the original. We were going
2 to mark a copy. Reserve a number. When we get a copy
3 we'll have it marked. What number will it be?

4 MR. HARDING: GD325.

5 Q Now, Mr. Winter, GD325, the resume, indicates that you
6 received a BA in geology in 1958 from the University of
7 Colorado. Am I mistaken, or did you say geography?

8 A It is geography.

9 Q So this resume has an error?

10 A Yes, it does.

11 Q When was the first time that you noticed that error?

12 A About what, one o'clock today.

13 Q Do you believe you graduated from the University of
14 Colorado in 1958 or 1959?

15 A I would have to believe my resume at this point, that it
16 was '58.

17 Q This indicates in the military experience that you became
18 a first lieutenant in 1959.

19 A That's also an error. It's second lieutenant is what the
20 commission is.

21 Q Did you take ROTC courses?

22 A Yes, I did.

23 Q In college?

24 A Yes, I did.

25 Q So upon graduation you were commissioned a second

1 lieutenant?

2 A Right.

3 Q Did you attend any classes at the University of Colorado
4 after graduation in 1958?

5 A Yes, I did. I took evening courses.

6 Q And what did you study in the evening?

7 A I took some accounting classes, I took Spanish. I think
8 I took a course in business administration, or purchasing;
9 I'm not sure. It was a combination of business and pur-
10 chasing.

11 Q And for how long did you take these evening courses?

12 A I don't recall exactly. For a period of approximately a
13 year, year and a half I took various courses in the even-
14 ings.

15 Q Did that lead to any degrees?

16 A Well, they were part of my total, you know, education and
17 degree, right.

18 Q My question was, did the night courses lead to any degree.

19 A Spanish did. I had to have a language. They would not
20 accept Norwegian as an authorized language at the school
21 and so I had to take Spanish as a specific course.

22 Q So what degree did you receive as a result of your night
23 courses?

24 A As a result of the Spanish course, it was the degree in
25 geography.

1 Q But I thought that you -- you just testified that this was
2 after you graduated in 1958 you took these night courses.

3 A (No oral answer given.)

4 Q After you graduated with your degree in geography in 1958,
5 then you took these night courses.

6 A I took additional courses after I finished school, yes.

7 Q After you graduated with your BA degree in geology -- or
8 geography in 1958?

9 A I think that's what my resume states, '58, yes.

10 Q So after '58 you took the night courses which led to yet
11 another degree?

12 A No. I had to take Spanish to qualify for my degree, and
13 I took that at night school.

14 Q So then you did not graduate with a bachelor's degree in
15 geography in 1958, did you?

16 A Are you questioning the date, is that what you're question-
17 ing?

18 Q Yes.

19 A I would have to get my transcript to find that out. I
20 don't recall.

21 Q Well, regardless, you graduated between a year and a year
22 and a half after 1958; is that correct?

23 A If that's what you're telling me. I don't know. I don't
24 recall.

25 Q No, that's not what I'm telling you. I want you to look

1 at your resume which you say is correct except for the
2 indication that you have a degree in --

3 A Geography.

4 Q -- geography rather than --

5 A Correct.

6 Q -- geology. You testified the year of graduation was
7 1959. The resume indicates 1958. Now you say you believe
8 your resume so it must have been 1958 when you graduated
9 with your degree in geography. You have indicated you've
10 taken night courses after graduation.

11 A Yes, I have.

12 Q That would seem to say a year to year and a half after
13 graduation, which would place it either into mid 1960 or
14 mid 1959, you concluded your studies with your foreign
15 language.

16 A If I'm understanding your question, I had to take Spanish
17 to get my degree in geography, and that was done in night
18 school, and I thought it was in '58. Perhaps it went into
19 '59. I'm not clear on the exact date.

20 Q Mr. Winter, isn't it true that you graduated in geography
21 in 1964?

22 A I don't think that's true at all. The record may prove
23 something to the contrary, but that's not my recollection.

24 Q Okay. So you recall still that you graduated some time
25 within a year, year and a half of your date on your resume

1 that indicates when you graduated with a degree?

2 A It was either '58 or '59 that I graduated.

3 Q With a degree in geography, not geology, and not mechanical
4 engineering?

5 A That is true.

6 Q Then you were commissioned in 1959 as a second lieutenant
7 because of graduation from ROTC, and do you recall when
8 you were commissioned as a second lieutenant, whether you
9 had received your degree from Colorado?

10 A At that point I had not actually received my degree. I
11 had finished all the military courses and was granted a --
12 a -- or commissioned a second lieutenant.

13 Q All right. So assuming that you were commissioned a
14 second lieutenant rather than a first lieutenant, in 1959,
15 and you had not graduated, then your resume is wrong
16 in 1958 as far as it indicates you graduated with a degree.

17 A I'd have to ask what you asked. I don't understand your
18 comment.

19 Q All right. Assume -- you believe your resume to be correct
20 that you received a commission in 1959?

21 A Yes, I do.

22 Q Then you could not have graduated with a degree in 1958,
23 since you have testified that you did not have a degree
24 when you became commissioned.

25 A That would probably clear up that it was probably '59

1 when I became a second lieutenant and -- that '58 that I
2 became a second lieutenant and '59 would have been when I
3 would have gotten my degree. I am assuming that is
4 correct at this point.

5 Q And you would not believe it to be possible you graduated
6 in 1964, would you?

7 A No, I wouldn't.

8 Q Because to the best of your recollection it was some five
9 years earlier than that date?

10 A I believe it was either 1958 or 1959.

11 Q In 1960, according to your resume, you went to work for
12 Martin-Marietta in Denver, Colorado, as a materials manager;
13 is that correct?

14 A Yes, that's correct.

15 Q Were you still going to night school at that time?

16 A Yes, I was.

17 Q Had you received your degree as of that time?

18 A No, I had to take Spanish to complete my degree.

19 Q So then you're into 1960 before you could have graduated
20 with your degree?

21 A Late '59 or early '60, right.

22 Q So then the resume indicating you joined Martin-Marietta
23 in 1960 is not accurate?

24 A It might have been in fall of '59, or late fall.

25 Q It's not accurate --

1 A It's not accurate down to months, no.

2 Q Well, two years, that says 1960 --

3 A Well, right, but if I had joined Martin-Marietta in the
4 fall, which I did, it would probably have been earlier
5 than that date.

6 Q Well, how long did you work for Martin-Marietta before
7 you received your degree?

8 A I don't recall.

9 Q Months? Years?

10 A As I recall it was six or eight months.

11 Q So that would place it then mid 1960 at the latest that
12 you received your degree?

13 A That would appear to be the case, yes.

14 Q All right. So -- All right. Now, when you started in
15 Denver, you were transferred to Tucson, and then you in-
16 dicated earlier that you went to work for Cutler-Hammer
17 in Milwaukee. The resume indicates, however, another four
18 year stint lists Denver. After you left Tucson did you go
19 back to Denver?

20 A Yes, I did.

21 Q For how long?

22 A I don't recall.

23 Q Okay. So you did not go to work for Cutler-Hammer from
24 Martin-Marietta in Tucson?

25 A I went to work for Martin-Marietta in Denver. Martin-

1 Marietta then transferred me to Tucson, Arizona. I worked
2 there for a period of time. They transferred me back to
3 Denver where I worked for another period of time. Then I
4 left Martin-Marietta and joined Cutler-Hammer.

5 Q Okay. Thank you. Now, this indicates 1966 that you became
6 a captain in the Army Reserve. Do you believe that date
7 to be correct?

8 A I didn't research that date. I thought it was approximately
9 right.

10 Q Within a year, you think --

11 A Yes.

12 Q -- you think it's right?

13 A Yes.

14 Q Could be 1965 or 1967?

15 A That's true.

16 Q The same for the year 1959 for the first lieutenant, which
17 is wrong, should be second lieutenant; could be '58, could
18 be 1960?

19 A That could also be true. I did not put much emphasis or
20 concern into the early portions of my resume. I'm more
21 concerned about things that I did in the latter years
22 that were more apropos to the writing of the resume.

23 Q And to your knowledge this is the only resume -- or strike
24 that. Was this resume ever sent out to anybody, any
25 companies?

1 A Yes, it was.

2 Q Did you send it out?

3 A Yes, I did.

4 Q To approximately how many companies did you send it?

5 A Oh, approximately a half a dozen.

6 Q Did you sent it out to any employment agencies?

7 A Yes, I did.

8 Q Do you recall whether they sent it out?

9 A I wouldn't know.

10 Q What employment agencies did you use?

11 A I sent it to at least a half a dozen employment agencies,
12 just under letter cover, so I have no idea whether they
13 received it or if they forwarded it to any other parties.

14 Q Did you have your name on it when you sent it to them?

15 A Yes, I did.

16 Q Do you know how they sent it out, if they sent it out?
17 With your name or without your name?

18 A I have no idea.

19 Q But you didn't send out any other resumes other than this
20 one?

21 A This particular resume was redrafted but only to the extent
22 of maybe changing a sentence or two.

23 Q So you did send out other resumes?

24 A It was basically the same resume but with maybe two or
25 three sentences changed, as I recall.

1 Q So it was a different resume then?

2 A If you call it different, yes.

3 Q And how many of those resumes did you send out?

4 A I have no idea.

5 Q Did you send those out also to employment agencies?

6 A I think the original draft of the resume, two or three
7 of them were sent out.

8 Q And you sent them out to be accurate to the best of your
9 knowledge of the facts concerning your background, didn't
10 you?

11 A I sent them out to paint a picture of an individual that
12 was looking for a job.

13 Q And that's you?

14 A That's me. And accurate to the extent that I put my em-
15 phasis on more recent data rather than research when I
16 was made a first lieutenant or second lieutenant or captain.
17 That was not my concern, and I did not research that.

18 Q I see.

19 A But I was a first lieutenant, I was a second lieutenant
20 and I was a captain.

21 Q But you did try to sell yourself based on the qualifications
22 you sent out?

23 A I did not try to sell myself on what happened back in
24 1958 and 1959 and '60. But like yourself, people like to
25 know where you've been for the last few years, so I filled

1 A 1953.

2 Q When did you enter the University of Colorado?

3 A I went to school originally in Milwaukee at the University
4 of Wisconsin Extension in Milwaukee.

5 Q And when did you enter that institution?

6 A 1954.

7 Q And how long did you attend that school?

8 A How long did I attend the University of Colorado?

9 Q No, University of Milwaukee, University of Wisconsin in
10 Milwaukee.

11 A One semester and one summer.

12 Q When did you enter the University of Colorado?

13 A 1954.

14 Q I'm sorry. My notes are in error. I have you entering
15 the University of Wisconsin-Milwaukee in 1954.

16 A No, I entered University of Wisconsin-Milwaukee, '53.

17 Q And you graduated from high school in '53?

18 A I believe that's correct, yes.

19 Q All right. Sir, were you a full -- When you entered the
20 University of Colorado were you a full-time student?

21 A Yes, I was.

22 Q Through the point where you received your commission in
23 the Army?

24 A I was a full-time student in the normal sense of the word
25 is used, yes.

1 A Yes, it is.

2 Q What was the business of Electri-Wire?

3 A They manufacture and jobshop electrical harnesses, wires,
4 cord sets, for various industries in the major marketing
5 area of the Midwest.

6 Q What kind of coin games did Americoin manufacture?

7 A We manufactured a game called Fire Chief, a game called
8 Junkyard, and a game called Dozer.

9 Q What was the last one?

10 A Like bulldozer.

11 Q Were those electronic games or electromechanical games?

12 A All three of those were electromechanical.

13 Q Did Americoin ever manufacture any electronic games?

14 A Yes, they did.

15 Q What games was that, sir?

16 A A very short run of a game called Killer Bee.

17 Q Killer Bee. Could you describe the game generally?

18 A It was an action game where you basically were swatting
19 at some lit targets simulating bees, the purpose of which
20 was to do it at a fast enough and accurate enough rate
21 to gain a score. It was electronic in construction and
22 design, housed in a typical arcade type cabinet.

23 Q What did you use to swat at these --

24 A It was a specially designed, rubber like paddle.

25 Q And the player would manipulate this paddle?

- 1 A Yes, he would. He would swat at it much as you would a
2 flyswatter.
- 3 Q As a light went on he would try to swat at it before the
4 light went out, something like that?
- 5 A Yes, he would.
- 6 Q And that was an electronic game?
- 7 A Yes, it was.
- 8 Q When was that game first made by the company?
- 9 A That would have been October of '78.
- 10 Q Who designed the game?
- 11 A Man by the name of Ed Sokol.
- 12 Q Is Americoin still in business?
- 13 A It is not producing any games at this point.
- 14 Q Does it have any kind of activity at this point?
- 15 A I understand they still sell parts.
- 16 Q Now, I understand, sir, from your testimony that you have
17 never seen the depositions of either Mr. Frederiksen or
18 Mr. Nutting given in this case; is that correct?
- 19 A That's correct.
- 20 Q Has any one --
- 21 A I have not -- Let me state a little more accurately, I've
22 had a document waved, you know, four feet away saying this
23 was their depositions. I was not given any of it, I did
24 not read it.
- 25 Q Who waved it at you?

1 A With Bally's attorneys.

2 Q Who gave it to Bally's attorneys?

3 A I don't know.

4 Q But Bally's attorneys had it in their possession on either
5 the first meeting or second meeting, is that what you're
6 saying, sir?

7 A Yes.

8 Q Do you recall the date of the document, approximately?

9 A I don't even know if it was dated.

10 Q Well, Bally's attorneys showed you the document on the
11 occasion of this meeting?

12 A Yes, they did.

13 Q What did they say about it?

14 A They asked me if I recognized any of the fixed assets
15 listed on the document.

16 Q Did you?

17 A Yes, I did.

18 Q What particular assets were listed on the document?

19 A I believe there were some of the same tooling and electri-
20 cal apparatus which was later sold to Midway.

21 Q And used by Dave Nutting and Associates?

22 A That's correct.

23 MR. GOLDENBERG: All right. Mr. Welsh, we
24 will go through the documents we have been given today
25 previously, and if we can find such a document we would

1 MR. GOLDENBERG: I don't have anything.

2 MR HARDING: That's all.

3 (The deposition concluded at 6:40 p.m.)

4 * * *

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BALLY MANUFACTURING CORPORATION,

Plaintiff,

-vs-

Case No. 78-C-2246

D. GOTTLIEB & CO., WILLIAMS
ELECTRONICS, INC., and ROCKWELL
INTERNATIONAL,

Defendants.

SPECIAL CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER

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